

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

NAVIENT SOLUTIONS, LLC,	.	Civil Action No. 1:19cv461
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	December 1, 2020
THE LAW OFFICES OF JEFFREY	.	11:07 a.m.
LOHMAN, et al.,	.	
	.	
Defendants.	.	
	.	
. . . . .	.	

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE  
(Via Teleconference)

APPEARANCES:

FOR THE PLAINTIFF:	GEORGE R. CALHOUN, ESQ. WHITNEY A. FORE, ESQ. Ifrah PLLC 1717 Pennsylvania Avenue, N.W. Suite 650 Washington, D.C. 20006
FOR THE LOHMAN DEFENDANTS:	JEFFREY E. GRELL, ESQ. Grell Feist PLC 825 Nicollet Mall, Suite 625 Minneapolis, MN 55402 and THOMAS F. URBAN, II, ESQ. Fletcher, Heald & Hildreth, PLC 1300 N. 17th Street, Suite 1100 Arlington, VA 22209
FOR DEFENDANTS GST FACTORING, INC.; GREGORY TRIMARCHE; AND RICK GRAFF:	MIKHAEL D. CHARNOFF, ESQ. Perry Charnoff PLLC 1010 N. Glebe Road, Suite 310 Arlington, VA 22201

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR  
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1 P R O C E E D I N G S

2 THE COURT: All right, counsel, I hope you're all  
3 there on the phone. This is Navient Solutions, LLC, versus The  
4 Law Offices of Jeffrey Lohman, et al., Civil Action 94cv461  
5 (sic). I want counsel, the attorney who is speaking for the  
6 plaintiff to address -- to introduce him- or herself.

7 MR. CALHOUN: Good morning, Judge. This is George  
8 Calhoun and Whitney Fore, Ifrah PLLC, for Navient Solutions,  
9 LLC. I'll be speaking for the plaintiff today.

10 THE COURT: All right, Mr. Calhoun.

11 And for The Law Offices of Jeffrey Lohman and as well  
12 as, as I understand it, Jeffrey Lohman and Jeremy Branch?

13 MR. GRELL: Yes, Your Honor. This is Jeff Grell,  
14 yes, and I am representing The Law Offices of Jeffrey Lohman,  
15 Jeffrey Lohman, and Jeremy Branch, along with Tom Urban, who is  
16 also on the line today.

17 THE COURT: All right. But you'll be the  
18 spokesperson, Mr. Grell?

19 MR. GRELL: Correct.

20 THE COURT: All right. And then the attorney for GST  
21 Factoring, Inc., Gregory Trimarche, and Rick Graff?

22 MR. CHARNOFF: Yes, good morning, Your Honor. This  
23 is Mike Charnoff, and I am representing GST Factoring, Gregory  
24 Trimarche, and Rick Graff.

25 THE COURT: All right. That should be all three

1 counsel then who are going to be the speakers. Because we are  
2 on the record but obviously cannot see you, it's important that  
3 before you say anything, just say your last name so my court  
4 reporter knows who's speaking, and then we will avoid a lot of  
5 problems.

6 I have before me the plaintiff's motion for partial  
7 summary judgment and the defendants' motions for summary  
8 judgment, and we've gone through this very voluminous record,  
9 and I think in my mind, the key question I would like Navient  
10 to answer for me is the argument the defendants are making that  
11 there is -- you are unable to show that any of the conduct by  
12 any of the defendants proximately caused the damages which  
13 you're seeking, because as I understand it, Mr. Calhoun, the  
14 only damages that your client is seeking in this case consists  
15 of, one, the attorneys' fees that your client incurred in  
16 having to defend these various TCPA actions that were either  
17 brought at arbitration proceedings or court proceedings, and  
18 also the loss of some of the loans that were cancelled as a  
19 result of your -- the alleged scheme.

20 First of all, is that a correct description of the  
21 two types of damages you're seeking in this case?

22 Mr. Calhoun, can you hear me?

23 MR. CALHOUN: I'm sorry, Your Honor, I put you on  
24 mute so that my shuffling around wouldn't make any noise.

25 THE COURT: Okay.

1 MR. CALHOUN: This is George Calhoun for Navient.  
2 The categories of damage that we're taking on are the  
3 attorneys' fees, the losses on some of the loans, and the  
4 settlement -- some of the settlement payments that were made in  
5 connection with these cases.

6 THE COURT: Right. So that all of your damages are a  
7 result of these TCPA actions that were brought against your  
8 client.

9 MR. CALHOUN: The loans would, would qualify under  
10 any theory, you know, so one of -- you know, we have alleged  
11 that we were harmed when these borrowers were advised not to  
12 pay their loans. That's a very difficult issue to quantify,  
13 but we do have for these ones that ended up filing lawsuits, we  
14 were able to quantify it because we were able to identify them  
15 and tie them to the program, so those would fall and we would  
16 say those are damages under any theory regardless of whether  
17 there's a TCPA case --

18 THE COURT: Yeah.

19 MR. CALHOUN: -- as a result of the instructions not  
20 to pay the loans.

21 THE COURT: No, but the reality of it is you've just  
22 sort of admitted you have -- other than the individuals who  
23 brought the TCPA claims, and in those cases, you did various  
24 compromises, so you lost revenue from those loans, and you may  
25 have had to also pay attorneys' fees to get to that point,

1 you're telling me that you don't have any actual evidence as to  
2 other loans that you may have lost revenue from as a result of  
3 the actions of, say, the GST people?

4 MR. CALHOUN: Yeah. We know that it happened, but we  
5 haven't been able to quantify it.

6 THE COURT: All right. But so the answer basically  
7 is if you can't quantify it, then it would be, I think,  
8 impossible at court and at trial to get anything. That would  
9 be considered inchoate. So your damages result from what I'll  
10 call the TSP end of the case, right?

11 MR. CALHOUN: That's correct, Your Honor.

12 THE COURT: Okay. So then the question is -- and I'm  
13 surprised that that TSP issue is really only addressed in  
14 basically a paragraph of your pleadings as far as we can tell,  
15 but if, in fact, Navient was violating the statute, then how in  
16 the world can you argue that you're entitled to any damages?

17 MR. CALHOUN: Well, that's a, that's a big if, number  
18 one, Your Honor. Again, this is George Calhoun for Navient.  
19 So we fundamentally disagree that we were violating the statute  
20 I think is where I would like to start, and -- but in any case,  
21 the, the reason that we -- that this harmed us is because if  
22 one were to conclude that our systems violated the TCPA,  
23 Navient Systems violated TCPA, there wouldn't be any phone  
24 calls whatsoever if they hadn't advised these borrowers not to  
25 pay Navient, not to pick up the phone, to try to increase the

1 number of calls to inflate the, you know, these claims.

2 THE COURT: Yeah, but the, but the problem -- wait.  
3 But the problem is I don't disagree with you. I mean, it's  
4 sort of an entrapment kind of theory, you know. But for the  
5 conduct of these folks, you wouldn't have been involved in  
6 making the robocalls or the improper calls to these people in  
7 the first place, but the problem is if, in fact -- and I  
8 understand the Supreme Court is going to be hearing a case  
9 involving whether the type of system you use qualifies.

10 Is that correct?

11 MR. CALHOUN: There is a case that's been before the  
12 Supreme Court that will clarify the scope or the definition of  
13 an autodialer under the TCPA; that's correct, Your Honor.

14 THE COURT: Now, is Navient actually a party in that  
15 lawsuit?

16 MR. CALHOUN: I don't believe so, no, Your Honor.

17 THE COURT: But my understanding is the district  
18 court decision that came out of the Western District of  
19 Pennsylvania that, as I understand it, found that Navient's  
20 system does not violate the statute, that that is on appeal,  
21 and the appeal has been stayed pending how the Supreme Court  
22 resolves the issue. So Navient's system, I assume, is  
23 definitely at stake in that Supreme Court decision.

24 Is that correct, Mr. Calhoun?

25 MR. CALHOUN: I think the Supreme Court decision -- I

1 think the Supreme Court decision would certainly provide  
2 clarity on what is and what is not an autodialer, and that  
3 would likely apply to Navient.

4 THE COURT: Okay. Now, if the Supreme Court were to  
5 find that the system that Navient is using violates the  
6 statute, how could you then argue that you're entitled to any  
7 damages in this case?

8 MR. CALHOUN: Well, Your Honor, so the first part of  
9 that would be I don't think that does anything with the  
10 tortious interference where they have instructed these -- they  
11 recruited these borrowers to fraudulently, instructed them not  
12 to pay, caused them not to pay.

13 THE COURT: Well, I might be -- okay. Let me -- I  
14 might agree with you on that, but if that were the case, that  
15 would possibly put the GST group still on the hook, but how  
16 would the Lohman folks be liable for that?

17 As I understand it, the only thing the Lohman  
18 people -- the Lohman lawyers or the Lohman group gets involved  
19 here is in getting these debtors to notify Navient to stop --  
20 not to call them, and then, you know, basically setting them up  
21 to call because they're in default, and triggering the TSP  
22 violation.

23 MR. CALHOUN: Your Honor, but it's more than that  
24 because what they also did was they told everyone, hey, we're  
25 not going to take any of these cases unless they're not paying,



1 so -- and the -- this entire program was set up to allegedly  
2 resolve these loans through what they called violations, and as  
3 Mr. Mize testified, the only violation they ever considered was  
4 a TCPA. He didn't do litigation himself, and he's told by  
5 Lohman that we can only take cases where they're not paying.

6 So the instructions to have them stop paying really  
7 can't be separated from the Lohman firm because for them to get  
8 a case to the Lohman firm, they have to tell them to stop  
9 paying. They have to get them to stop paying so they can get  
10 the possibility of phone calls.

11 So it's not separable like that. The defendants  
12 would like it to be, but it just doesn't work that way because  
13 of how these defendants interconnect.

14 THE COURT: All right. Mr. Grell?

15 MR. GRELL: Yes, Your Honor. This is Jeff Grell.  
16 First of all, I, I have to question this argument that there  
17 wouldn't have been any ATDS calls in the absence of what the  
18 defendants purportedly did. These were just distressed  
19 borrowers. That's, that's what these marketing materials were  
20 targeting, not that my clients had anything to do with the  
21 marketing materials, but that's who they were targeting.

22 There's no way to prove how many ATDS calls would  
23 have been made with or without the intervention of the  
24 defendants. First of all, there's no evidence of that  
25 whatsoever, so this argument is total speculation by Navient.

1           Second, as far as the Lohman defendants advising  
2 people to stop paying, assuming that's true, over and over  
3 again, Navient refutes this claim that this is somehow unlawful  
4 or tortious. There's no case that they cite in support of this  
5 argument.

6           And people are often advised by their lawyers to  
7 breach contracts for various reasons. If anybody's been  
8 through a divorce, there are certain debts that you don't pay  
9 because there's advantages in the divorce to make them mutual  
10 between the spouses and not pay them off on your own.

11           The case I was thinking of that's probably most  
12 relatable to people, especially sports fans, you know, if  
13 you're a sports agent and you've got a star quarterback and  
14 he's got a bad contract, you say: Hey, don't play in the  
15 preseason. Sit out, and make these people renegotiate your  
16 contract.

17           You never hear of an NFL team suing that agent for  
18 tortious interference with contract. It's not tortious. It's  
19 justified under all of the case law that we have cited because  
20 you could always respond by requesting good advice, which is  
21 what the Lohman defendants did here.

22           And yeah, the Lohman defendants were well aware of  
23 Navient's propensity to violate the TCPA, and they said: Hey,  
24 if you quit paying, it's likely that Navient will call you  
25 eight times a day, and within five days, we'll probably have

1 enough for a TCPA case, because that's what Navient does, and  
2 they're well known for doing it. That's just a lawyer being a  
3 lawyer in my opinion.

4 And finally, go and look at their record if you have  
5 any questions. There's, there's really no evidence that, that  
6 the Lohman defendants advised people to stop calling. And  
7 Mr. Calhoun's arguments, well, they wouldn't take any clients  
8 unless -- I mean, excuse me, stop paying. The argument is they  
9 wouldn't take any clients who were still paying on their loan.  
10 That's -- there is much testimony that it's not -- I will say  
11 it's at a minimum disputed, so that doesn't really get us  
12 anywhere on summary judgment.

13 But it's not -- the Lohman defendants take TCPA  
14 claims. Whether you're paying your debt or not doesn't matter.  
15 What matters is whether you're dealing with a, with a creditor  
16 who, who violates the TCPA, which Navient has a reputation for  
17 doing, and that's undisputed. So that's my response to that  
18 point.

19 The main thing is just there's no, there's no law,  
20 there's no even logical argument that telling people not to pay  
21 a loan is somehow tortious. It's certainly not racketeering  
22 activity. That's just crazy.

23 THE COURT: All right. Mr. Charnoff, do you want to  
24 speak on the issue of damages?

25 (No response.)

1 THE COURT: Mr. Charnoff, are you there?

2 (No response.)

3 THE COURT: Mr. Calhoun, can you still hear me?

4 MR. CALHOUN: We can hear you, Your Honor.

5 THE COURT: All right. Mr. Grell, can you still hear  
6 me?

7 MR. GRELL: Yeah, I can hear you. There were a  
8 couple of beeps, I don't know if he got disconnected or what,  
9 just as I stopped talking.

10 THE COURT: Well, I'm going to -- I'm going to  
11 shorten the agony here. I, you know, I think, Mr. Grell, you  
12 actually fairly pointed to the fact that the evidence in this  
13 case is all over the place. I think that there are some  
14 serious problems for both sides.

15 I think that the RICO claims could probably be  
16 sustained at a trial. I think there's enough evidence that a  
17 reasonable jury could find the RICO violation. I also think  
18 there's enough evidence that they could find that there is not  
19 a RICO violation.

20 In terms of the biggest concern I have, frankly, is  
21 the issue about whether or not the plaintiff can really show  
22 that any of the conduct here proximately caused the damages,  
23 and I think that the fact that the Supreme Court may resolve a  
24 significant issue in this case, which is whether the, the way  
25 in which Navient makes these automated calls violates the

1 federal statute, would have a huge material difference in my  
2 view on the outcome of this case.

3 So what I'm going to do is I'm going to deny both  
4 motions, all motions for summary judgment. I'm finding that  
5 there's sufficient material facts at issue in this case such  
6 that the case can't be resolved on summary judgment.

7 I also notice and it's sort of interesting, I had my  
8 law clerk look at the cases that the plaintiff was citing for  
9 many of its arguments, and I did not find any that involved  
10 summary judgment decisions. They were -- most of them were  
11 decisions made after a trial, where the court had a fully  
12 developed evidentiary record and could then opine upon whether  
13 there was an adequate RICO case or a non-adequate RICO case.  
14 There were a couple of motions to dismiss as well that were  
15 cited, but in terms of just the procedural posture, summary  
16 judgment is a very different animal, and there's enough  
17 evidence on both sides that I think at this point summary  
18 judgment is not appropriate.

19 Now, having said that, I think everybody ought to  
20 give some serious thought to thinking about whether you can  
21 settle. I notice that some of the original defendants in this  
22 case, there have been settlements worked out. I have no idea  
23 what was involved in those settlements, but in this case, Judge  
24 Buchanan, I don't know how many -- you have had, I think, some  
25 fair discovery disputes with her. She's the magistrate judge

1 who knows this case pretty well. If you would want to try a  
2 chance at mediating with her, that's fine. There are plenty of  
3 private mediators. And if you don't want to try to settle,  
4 that's also fine.

5 At this point, the problem that we have from a  
6 logistical standpoint, we have two issues. The first is we're  
7 not scheduling civil jury trials for the foreseeable future.  
8 We have -- you've probably seen our latest order from the chief  
9 judge has postponed all criminal jury trials, and we probably  
10 had close to a dozen in the hopper to be tried in November and  
11 December. They've been put off now to the earliest, I believe,  
12 would be January 19, and even then, depending upon the COVID  
13 situation, I'm not sure that they'll start up again, but the  
14 criminal trials will have to take -- they take priority, and we  
15 cannot conduct at this point more than two trials at a time,  
16 and so things are very slow.

17 There are also civil cases that have been in the  
18 pipeline for some time awaiting a trial which would have  
19 priority over, over this one.

20 So at this point, given the fact that the Supreme  
21 Court decision would be very valuable in having a full picture  
22 of the legal issues in this case and the Supreme Court clearly  
23 will issue an opinion by no later than June 30, my proposal is  
24 that I'll give you a trial date in late July, which would allow  
25 you enough time to, number one, if you're going to settle,

1 settle. If the Supreme Court's ruling comes out even before  
2 June 30, that gives you-all time to absorb it and possibly to  
3 re-brief the issue of causality, because I think that that in  
4 my view is a critical issue for the issue of damages.

5 So I don't know if you have your calendars in front  
6 of you. We can just set a date in July now, but that would be  
7 the earliest that I could conceive of this case going to trial  
8 even if we weren't waiting for the Supreme Court, because we  
9 have to get all the criminal cases out of the hopper first and  
10 then those civil cases that have been waiting to be tried.

11 MR. CHARNOFF: Your Honor, this is Mike Charnoff. I  
12 want to apologize. When you asked me if I wanted to weigh in  
13 on the last question --

14 THE COURT: Yeah.

15 MR. CHARNOFF: -- I went to turn off my mute, and I  
16 believe I disconnected myself.

17 THE COURT: Okay.

18 MR. CHARNOFF: I have been back in for a few minutes,  
19 and I have been listening to your reasoning.

20 I'm going to volunteer immediately that I already  
21 have a two-week jury trial set for July 19 through July 30,  
22 which has been, like many trial dates, heavily contested and  
23 moved around several times already.

24 THE COURT: Yeah, yeah.

25 MR. CHARNOFF: I don't expect that one is going to

1 get moved again, but other than that, afterwards, I'm available  
2 again until December.

3 THE COURT: Is there any chance that case would not  
4 be done before August 2?

5 MR. CHARNOFF: No. Unfortunately, that one is going  
6 to go the full way. It's multiple parties and --

7 THE COURT: All right.

8 MR. CHARNOFF: -- has a ton of fact witnesses and  
9 experts in that case.

10 THE COURT: So the week of August 9 then would be  
11 definitely safe?

12 MR. CHARNOFF: Yes. Yes, Your Honor.

13 THE COURT: How about for the other counsel?  
14 Mr. Calhoun?

15 MR. CALHOUN: Your Honor, I hoped -- this is  
16 Mr. Calhoun. I would have hoped it would have been last  
17 August, but August 9 works for me.

18 THE COURT: All right. And how about, Mr. Grell, how  
19 about for you?

20 MR. GRELL: That's open for me, thanks.

21 THE COURT: All right. So look, I'll --

22 MR. URBAN: Your Honor, this is Tom Urban.  
23 Unfortunately, I've got a trial starting August 17. I imagine  
24 this is going to be more than a one-week trial.

25 THE COURT: Not necessarily. We try things pretty



1 quickly here.

2 Are you -- you're cocounsel on this case, or are you  
3 local counsel?

4 MR. URBAN: I'm local counsel, Your Honor.

5 THE COURT: Well, I can have you here the first week,  
6 and if the case went into the second week, we could excuse you  
7 at that point.

8 MR. URBAN: Thank you.

9 THE COURT: Yeah. Local counsel are of most value in  
10 terms of getting the jury settled and making sure that, you  
11 know, outside counsel really knows how things operate, so  
12 that's not a problem, Mr. Urban.

13 MR. URBAN: Thank you, Your Honor.

14 THE COURT: All right? We'll issue an order today  
15 that sets the case for trial by jury starting on Monday,  
16 August 9. When I do jury trials in civil cases, my juries are  
17 eight people. The minimum number for a civil case is six.  
18 They're not alternates. The jury is eight, but should we lose  
19 one or two people along the way, we'd still have enough to try  
20 the case.

21 Depending upon where we are with vaccinations and  
22 COVID and assuming the case goes to trial, it's possible I  
23 might increase the jury to ten just to have a few extra folks  
24 because one of the things that courts around the country are  
25 seeing is that jurors either themselves or family members

1 either get sick or get exposed, and it creates problems, they  
2 have to drop out. The few trials we've had here, that actually  
3 happened in one of them. So I want to have enough, so I might  
4 very well have a ten-person, but it would be eight to ten  
5 people, depending upon where we are.

6 And obviously, we'll be in touch with you in mid-July  
7 assuming that that date holds to work out any motions in limine  
8 or pretrial matters.

9 But that's, that's the lay of the land. As I've  
10 said, I really recommend both sides might want to think about  
11 trying to see if you can work out a resolution since other  
12 members of this case have done so, but if not, we'll see you  
13 sometime hopefully in the summer, all right?

14 MR. CALHOUN: Thank you, Your Honor.

15 THE COURT: All right, thank you.

16 MR. URBAN: Yes, Your Honor. Do you want to schedule  
17 a pretrial before August 9?

18 THE COURT: Who's speaking, please?

19 MR. URBAN: That was Tom Urban. Sorry.

20 THE COURT: Mr. Urban.

21 Have we have not done the final pretrial in this case  
22 yet?

23 A VOICE: No, Your Honor. We haven't. If you  
24 remember, it got pushed off for the motions for summary  
25 judgment.

1           THE COURT: That's right, all right. Well, the final  
2 pretrial would be the time at which you would file your witness  
3 lists and exhibits and any uncontested or any stipulated facts,  
4 and we should have that done in advance. Let's make all of  
5 that due -- hold on one second.

6           All right, the pretrials that I'm doing in, in June,  
7 this does not have to be on that calendar. How about Thursday,  
8 July 8?

9           All right. And we can do it -- we can see whether we  
10 need an actual -- we don't normally need a pretrial conference  
11 if I've already set the trial date, but I'll set July 8 at  
12 10:00 for pretrial motions. How's that? Because that gives  
13 you a few weeks before the trial. So if you want to have any  
14 motions in limine heard or anything else, that's the July 8  
15 date.

16           And then in terms of filing your exhibits and your  
17 witness lists, let's back that up to June 18. So exhibit and  
18 witness lists filed by June 18, and that gives enough time for  
19 any objections to be filed such that we can hear the argument  
20 of those at the pretrial -- final pretrial.

21           And my law clerk -- we'll get an order out to you  
22 with those dates in it. All right?

23           MR. URBAN: Thank you, Your Honor.

24           THE COURT: All right.

25           MR. CALHOUN: Thanks, Your Honor.

1 THE COURT: And again, don't hesitate to call Judge  
2 Buchanan or a private mediator if you think that that would be  
3 beneficial.

4 All right, if there's nothing further then, we're  
5 going to sign off for our next case. Thank you.

6 MR. CALHOUN: Thank you, Your Honor.

7 THE COURT: All right.

8 (Which were all the proceedings  
9 had at this time.)

10  
11 CERTIFICATE OF THE REPORTER

12 I certify that the foregoing is a correct transcript of  
13 the record of proceedings in the above-entitled matter.

14  
15  
16 /s/  
17 \_\_\_\_\_  
18 Anneliese J. Thomson  
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